

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

VITALY BORKER,

Defendant.

**Application for  
Order of Continuance**

**22 Mag. 1638**

STATE OF NEW YORK )  
COUNTY OF NEW YORK ) ss.  
SOUTHERN DISTRICT OF NEW YORK )

MATTHEW WEINBERG, pursuant to 28 U.S.C. §1746, hereby affirms the truth of the following under penalties of perjury:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Southern District of New York. I submit this affirmation in support of an application for an order of continuance of the time within which an indictment or information would otherwise have to be filed, pursuant to 18 U.S.C. § 3161(h)(7)(A). This is the second order of continuance that has been sought in this case.

2. The defendant was charged in a complaint, dated February 16, 2022, with violating Title 18 United States Code, Sections 1341 and 2 (mail fraud), 1343 and 2 (wire fraud), and 1028A and 2 (aggravated identity theft). On February 18, 2022, the defendant was arrested and presented before Magistrate Judge Stewart D. Aaron, who ordered the defendant detained. At the initial presentment, defense counsel John Diaz waived his client's right pursuant to Rule 5.1 of the Federal Rules of Criminal Procedure to a preliminary hearing within 14 days of the initial appearance. Accordingly, under the Speedy Trial Act, the Government had until March 21, 2022 within which to file an indictment or information.

3. On March 21, 2022, Magistrate Judge James L. Cott entered an Order of

Continuance, pursuant to 18 U.S.C. § 3161(h)(7)(A), extending the time within which an indictment or information would otherwise have to be filed in this case until April 20, 2022.

4. The defendant is now represented by Leo Shalit, Esq. Defense counsel and I are engaged in discussions concerning a possible disposition. Those discussions have not been completed, and we plan to continue our discussions, but we do not anticipate a resolution before the deadline under the Speedy Trial Act expires on May 20, 2022.

5. Therefore, the Government is requesting a 30-day continuance until May 20, 2022, to continue the foregoing discussions. Defense counsel consented to this request by telephone on April 14, 2022.

6. Andrew S. Dember, Deputy Chief of the Criminal Division, has approved this application.

7. For the reasons stated above, the ends of justice served by the granting of the requested continuance outweigh the best interests of the public and the defendant in a speedy trial.

Dated: New York, New York

April 19, 2022

  
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MATTHEW WEINBERG  
Assistant United States Attorney  
646-957-4206

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Upon the application of the United States of America and the affirmation of Matthew Weinberg, Assistant United States Attorney for the Southern District of New York, it is found that the defendant was charged with violating Title 18 United States Code, Sections 1341 and 2 (mail fraud), 1343 and 2 (wire fraud), and 1028A (aggravated identity theft), in a complaint dated February 16, 2022, and was arrested on February 18, 2022;

It is further found that the defendant was presented before Magistrate Judge Stewart D. Aaron on February 18, 2022, and was ordered detained;

It is further found that, on March 21, 2022, Magistrate Judge James L. Cott entered an Order of Continuance, pursuant to 18 U.S.C. § 3161(h)(7)(A), extending the time within which an indictment or information would otherwise have to be filed in this case until April 20, 2022;

It is further found that Leo Shalit, Esq., counsel for the defendant, has been engaged in, and is continuing, discussions concerning a possible disposition of this case with Assistant United States Attorney Matthew Weinberg;

It is further found that the Government has requested a continuance of 30 days to engage in further discussions with counsel about the disposition of this case and that the defendant, through counsel, has consented that such a continuance may be granted for that purpose and has specifically waived his right to be charged in an indictment or information for an additional 30 days; and

It is further found that the granting of such a continuance best serves the ends of justice and outweighs the best interests of the public and the defendant in a speedy trial; and therefore it is

ORDERED that the request for a continuance pursuant to 18 U.S.C. § 3161(h)(7)(A) is hereby granted until May 20, 2022, and that a copy of this Order and the affirmation of Assistant United States Attorney Matthew Weinberg be served by email on defense counsel by the United States Attorney's Office.

Dated: New York, New York  
April 20, 2022

*Stuart D. Aern*  
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United States Magistrate Judge  
Southern District of New York